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U.S. Citizenship
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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: SEP 07 2005
EAC 03 174 52739

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time of filing, the petitioner was a graduate student, and not yet seeking employment. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director did not contest that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel asserts that the director erred in not issuing a request for additional evidence prior to denying the petition and requests that the new materials submitted on appeal be considered. Assuming the director erred, the most appropriate remedy would be to consider the materials that might have been submitted in response to such a notice on appeal. Thus, we will consider the new materials and counsel's remaining assertions below.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Master's degree in Mechanical Engineering from the Massachusetts Institute of Technology (MIT). The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, engineering medical devices. The director then concluded, with little explanation, that the *proposed* benefits of the petitioner's work, development and commercialization of products to improve wound and cardiac care that could be sold nationwide, would not be national in scope. We withdraw that finding and conclude that such proposed benefits would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

At the outset, we acknowledge the highly distinguished reputation enjoyed by MIT. We will not presume, however, that every successful engineering Ph.D. candidate at MIT warrants a waiver of the job offer requirement in the national interest. Nor will we infer the impact of a particular alien based on the stature of his advisor. Rather, we look to the track record of the individual alien. In addition, the petitioner's memberships and recognition from various entities relate to criteria for aliens of exceptional ability, a classification that normally requires a labor certification. We cannot conclude that an alien meeting two, or even the requisite

three, criteria warrants a waiver of that requirement. Moreover, the petitioner's inclusion in Strathmore's Who's Who is not persuasive. Appearing as one of thousands, or even hundreds of other successful individuals in a frequently published directory is not evidence of a track record of success with some degree of influence on the field as a whole.

Further, the assertions by counsel and one of the petitioner's references regarding the petitioner's academic achievements have limited relevance. For example, on appeal, [redacted] argues strenuously that the petitioner's admission to Harvard and MIT and academic success at MIT should be a consideration in these proceedings. Academic performance can an indicator of potential success in one's field. It has been held, however, in unambiguous terms, that academic performance, as measured by such criteria as grade point average, cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. In all cases the petitioner must demonstrate specific prior achievements that establish the alien's ability to benefit the national interest. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 219, n.6. This is a precedent decision and we are bound by it. Similarly, the petitioner's high IQ, sufficient for membership in MENSA, is not determinative.

At the time of filing, the petitioner had yet to publish any of his work in a nationally circulated peer-reviewed journal and had yet to obtain approval of his pending patent. The lack of published material does not preclude a conclusion that the petitioner has influenced the field. We recognize that designers may not publish their work due to intellectual property concerns. In such cases, however, we look for other objective evidence that the designer's work has influenced the field. Counsel and some of the references imply that filing a patent through MIT is rare.[1] Nevertheless, an alien cannot secure a national interest waiver simply by demonstrating that he holds a patent. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 221, n. 7.

The petitioner submitted his business plan for SmartCure, the company that will purportedly commercialize the patent pending innovation. The plan, while placing in the top seven in MIT's 50K Entrepreneur Competition, was not ultimately selected as a winner. Some references assert that the MIT $50K competition is open to faculty and private industry. The materials provided, however, make clear that it is limited to "student entrepreneurs" at MIT's five schools. Nevertheless, all of the seven finalists were invited to London to present their plans. While the prestige of the 50K competition demonstrates the potential for SmartCure to impact the medical or engineering field, the record contains no evidence that it had already done so as of the date of filing. The record contains no evidence that SmartCure has attracted any venture capital or interested customers or clients.

The plan reflects that cofounders [redacted] and [redacted] performed the "breakthrough" research relating to micromechanical cures for wound healing published in *Nature, Science* and *Scientific American*. The petitioner is listed as one of four engineers for the company and is noted for his marketing and business expertise in addition to his mechanical design skills. While the plan identifies the type of customers SmartCure hopes to attract, it does not identify any potential customers who have already expressed an interest in purchasing SmartCure's product.

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[1] According to MIT's website, http://web.mit.edu/tlo/www/info.html, MIT sponsors research that leads to 400 inventions per year and has filed over 100 patent applications per year in each of the past five years, licensing between 60 to 100 of those innovations.

The petitioner submits several reference letters in support of the significance of the petitioner's innovation. The director noted that most of the letters were from the petitioner's immediate circle of colleagues. On appeal, the petitioner submits a rebuttal from one of those references asserting that his familiarity with the petitioner should not diminish the integrity of his comments. In addition, [redacted] challenges the director's "disregard" of the letters from colleagues. The issue, however, is not whether or not the petitioner's references are biased. We make no such suggestion. This office acknowledges that letters from an alien's colleagues are valuable evidence; collaborators are in the best position to explain the nature of the petitioner's role on various projects. By themselves, however, such letters are insufficient. They cannot demonstrate that the petitioner has influenced the field nationally.

Where other evidence of influence is not readily available, such as evidence that the alien is widely cited, the subject of journalistic coverage, the inventor of a patented innovation that has generated demonstrable interest in licensure and usage, letters from independent references can serve as evidence of a wider influence than the alien's immediate circle of colleagues.

We will evaluate all the letters submitted, both initially and on appeal, below. We emphasize upfront, however, that the letters must be evaluated, not simply counted. Letters from independent experts who were previously aware of the petitioner's reputation are more persuasive evidence of acclaim than letters from experts reviewing the petitioner's credentials for the first time in response to a request for a reference letter. Similarly, experts who identify specific contributions and affirm their own reliance of the petitioner's work, or at least explain the impact of the petitioner's work, are more persuasive than letters that provide general praise.

The petitioner collaborated on his patent-pending innovation with [redacted], a surgeon at Brigham and Women's Hospital and an associate professor at Harvard who also obtained a Ph.D. in mechanical engineering from MIT. In his initial letter [redacted] attests to the petitioner's skill "in numeric modeling and the simulation of biologic tissues, which he uses to predict optimal forces to stimulate wound healing." [redacted] continues that the petitioner is the first author of a paper in preparation reporting their results. [redacted] does not identify a single hospital, clinic or physician that has expressed any interest in becoming a client of SmartCure or otherwise utilizing the petitioner's innovation.

[redacted] an associate professor at MIT, provides general praise of the petitioner and relates an anecdote of an occasion when the petitioner, while serving as a teaching assistant for a visiting professor for Cambridge, correctly predicted a flaw in the professor's approach. The petitioner's success as a teaching assistant does not reflect that his cardiac and wound care innovations, the bases of this petition, were already recognized as a breakthrough in the field.

[redacted] the petitioner's Master's thesis supervisor, provides more details regarding the petitioner's research. [redacted] discusses the petitioner's thesis, which involved using a theoretical paradigm for examining the role of and motivation for the use of endovascular stenting. [redacted] does not explain how this work has influenced the field. In discussing the petitioner's research on wound care products, [redacted] states only that the pending publication of this work "may" be an important paper and that the resulting product "has [the] potential to alleviate chronic wounds."

[redacted] a senior research scientist at MIT, asserts:

> [The petitioner] has designed a stent balloon interaction chamber that allows for the implementation of pressures exceeding 20 atmospheres to study the effect of external pressure on the inflating balloon with a stent placed around the balloon. This allows [the petitioner] to independently control the internal pressure inside the balloon and the external pressure in the chamber.

[redacted] however, does not identify any cardiology unit applying this work. The record contains no evidence that the petitioner had even presented this work at a cardiology conference where it could be reviewed and evaluated by cardiologists.

[redacted] a professor at the Virginia Military Institute, discusses the petitioner's work with adhesion related disorders. [redacted] explains that endoscopic surgeries on the digestive tract "often cause outgrowths that link the digestive tract to the inner membrane that surrounds the stomach." The petitioner "has designed a biodegradable polymer scaffold that will block the formation of this adhesive tissue, by using a static-electrical charge device that attaches to the tissue or a Velcro devise that sticks to the scar tissue." [redacted] explains that these scaffolds are superior to current devices that often slip off. [redacted] however, does not identify a single hospital or clinic that is using or investigating these scaffolds.

The remaining letters come from beyond the petitioner's immediate circle of colleagues. These letters, however, mostly discuss the prestige of MIT, recount the petitioner's academic honors and praise the petitioner's abilities. They assert that the petitioner has made significant contributions without identifying those contributions and explaining their impact. While they attest to the potential applications of the petitioner's work and the importance of treating chronic wounds, they fail to identify any hospital, clinic or physician that has expressed an interest in applying the petitioner's work or becoming a client of SmartCure.

For example, [redacted] is Chief of the Cardiovascular Branch of the National Institutes of Health (NIH), but does not indicate that NIH is considering funding research on the petitioner's wound care products. On appeal, [redacted] asserts that he learned of the petitioner's work when his search of articles on lesions in WorldCat produced the petitioner's unpublished thesis. Whil[redacted] asserts that he requested a copy of the manuscript, he does not indicate that the petitioner's work influenced his own. The record contains no evidence tha[redacted] has cited the petitioner or is investigating the petitioner's stent, scaffold or wound care device. Even if a request for one's work carried as much weight as a citation, which it does not, we would not typically find that a single citation is evidence of an influence on the field as a whole.

[redacted] is Director of Research and Development for Advanced Stent Technologies, Inc., but fails to indicate that this company has expressed any interest in applying the petitioner's stent research. Rather, [redacted] attests to the "strong potential" that the petitioner's wound care work will "revolutionize the field of wound treatment forever." [redacted] is the Executive Director at the Masonic Medical Research Laboratory of Upstate Medical University, but does not indicate that his laboratory or university is applying the petitioner's work.

While the petitioner's research clearly has practical applications, it can be argued that any research or innovation, in order to be published or patented, must offer new and useful information to the pool of knowledge. As of the date of filing, the petitioner had yet to publish his work in a peer-reviewed journal. His patent was still pending and his company had yet to attract capital or prospective clients. There is no

evidence his devices were in either animal or human clinical trials. As such, the impact of his work on the field cannot be gauged.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.